



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 2, 1993

Mr. William J. Delmore, III  
General Counsel  
Office of the District Attorney  
201 Fannin, Suite 200  
Houston, Texas 77002-1901

OR93-408

Dear Mr. Delmore:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 20289.

The Harris County District Attorney's Office (the "district attorney") has received a request for access to the district attorney's file in Cause No. 526,673, in which the district attorney prosecuted the requestor for the offense of murder. You do not object to release of some of the requested information. You claim, however, that the remaining information may be withheld from required public disclosure under section 3(a) of the Open Records Act.

As a threshold issue, we first address your contention that the district attorney's office is a part of the judiciary within the meaning of section 2(1)(H) of the act and therefore is not subject to the act. We rejected this argument in a recent ruling issued to your office, Open Records Letter OR93-213 (1993). As we stated in that letter, a district attorney's office does not fall within the judiciary exception because it is not a court and is not directly controlled or supervised by one and because its functions are primarily executive in that its primary duty is to enforce the law. *See* Attorney General Opinion JM-266 (1984). Furthermore, the district attorney is an entity that is supported by or expends public funds. V.T.C.S. art. 6252-17a, § 2(1)(G) (definition of governmental body). Accordingly, the district attorney is subject to the act and must release the requested information unless it falls within one of the exceptions enumerated in section 3(a) of the act. You claim that the requested information is excepted from required public disclosure by sections 3(a)(1), 3(a)(3), and 3(a)(8) of the Open Records Act.

Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." You claim

that the requested information is excepted by section 3(a)(1) because it constitutes work product and is subject to the "law enforcement privilege" set forth in *Hobson v. Moore*, 734 S.W.2d 340 (Tex. 1987). This argument was also rejected in Open Records Letter OR93-213 (1993). As we stated in that ruling, section 3(a)(1) does not encompass work product or discovery privileges. See also Open Records Decision No. 575 (1990). Such protection may exist under section 3(a)(3), if the situation meets the section 3(a)(3) requirements.<sup>1</sup> You do not indicate that litigation in this matter is pending or reasonably anticipated. We thus have no basis on which to conclude that the requested information may be withheld from required public disclosure under either the work product doctrine or section 3(a)(3) of the Open Records Act. See Open Records Decision Nos. 551 (1990) (section 3(a)(3) applies to information relating to pending or reasonably anticipated litigation); 518 (1988) (section 3(e) does not relieve governmental body from demonstrating general applicability of section 3(a)(3)).<sup>2</sup>

Section 3(a)(8), which excepts

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

With respect to section 3(a)(8), you argue that this exception should apply to all material in a closed law enforcement file. You also dispute our use of a standard that permits you to withhold from a closed file only that information the release of which

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<sup>1</sup>Please note that section 14(f) of the act, added by the 71st Legislature in 1989, chapter 1248, section 18 provides in part that "exceptions from disclosure under this Act do not create new privileges from discovery." Accordingly, the *Hobson* court's apparent use of section 3(a)(8) as a basis for the "law enforcement privilege" is no longer valid.

<sup>2</sup>The information submitted to us for review appears to include information generated by the National Crime Information Center ("NCIC"), the Texas Crime Information Center ("TCIC") files, and certain locally compiled criminal history record information ("CHRI"). Title 28, Part 20 of the Code of Federal Regulations governs the release of CHRI which states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* We conclude, therefore, that if the CHRI data was generated by the federal government or another state, it may not be made available to the public by the district attorney except in accordance with federal regulations. See Open Records Decision No. 565. CHRI information generated within the state of Texas and TCIC files must be withheld from required public disclosure under section 3(a)(1) in conjunction with common law privacy doctrine. See Open Records Decision Nos. 565; 216 (1978); *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public). However, section 3B of the Open Records Act grants the requestor a special right of access to CHRI information generated within the state of Texas and to TCIC files relating to her.

would "unduly interfere with law enforcement." In Open Records Letter OR93-213, we reviewed the same argument and rejected it. Accordingly, we will apply the existing standard of undue interference with law enforcement.

When section 3(a)(8) is claimed as a basis for excluding information from public view, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how and why release would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) (citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)); *see also* Open Records Decision No. 413 (1984) (Department of Corrections is a "law enforcement" agency within the meaning of section 3(a)(8)). We have examined the information submitted to us for review. We conclude that release of some of the information would undermine a legitimate law enforcement interest. This information has been marked and may be withheld from required public disclosure under section 3(a)(8) of the Open Records Act. Except as noted above, the remaining information must be released in its entirety.

Because prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



William Walker  
Assistant Attorney General  
Opinion Committee

WMW/GCK/jmn

Enclosures: Marked Documents

Ref.: ID# 20289  
ID# 20668

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